

**RESOLUTION NO. 14-008**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING SITE DEVELOPMENT PERMIT NO. SD13-0022 TO INSTALL AN 8-  
FOOT TALL STEEL TUBULAR FENCE AROUND AN EXISTING LOADING DOCK  
LOCATED AT THE REAR OF THE BUILDING AT 601 MCCARTHY BOULEVARD**

**WHEREAS**, on December 13, 2013, an application was submitted by Kay Satit for Samsung Semiconductor Incorporated (“Permittee”), 601 McCarthy Boulevard, Milpitas, CA 95035 to install an 8-foot tall steel tubular fence around an existing loading dock located at the rear of the building at 601 McCarthy Boulevard (“Project”). The property is located within the Industrial Park Zoning District with Site and Architectural and Recreation and Entertainment Overlay (MP-S-RE) (APN: 86-02-039).

**WHEREAS**, on July 9, 1997, the Milpitas Planning Commission approved “S” Zone Approval to allow construction of two research and development buildings on an industrial park campus located at the Project site.

**WHEREAS**, on May 23, 2007, the Milpitas Planning Commission approved a Master Sign Program (UP2007-5 and SA2007-5) to allow installation of a new monument sign at the corner of McCarthy Boulevard and Sumac Drive for the corporate campus.

**WHEREAS**, the Project site is currently occupied for industrial uses, such as research and development.

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA Guidelines Section 15301 (Existing Facilities).

**WHEREAS**, on February 26, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The Planning Commission finds that no exterior or interior alteration on the existing building is proposed with the Project. The Planning Commission further finds the Project is categorically exempt from further environmental review pursuant to Section 15301 (Existing

Facilities) of the CEQA Guidelines since the proposed installation of an 8-foot tall steel tubular fence is to an existing industrial development.

**Section 3:** Site Development Permit (Section XI-10-57-03(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD13-0022:*

- a) *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Project is consistent with this finding because the proposed fencing is located along the interior of the site and not visible from the public street. The Project will not detract from the building architecture or streetscape. The design of the fence complements the architecture of the building. The proposed area is the expansion of the existing loading dock in the rear of the building. The area will not be seen in the front of the building. The proposed steel material is compatible with the adjacent building.

- b) *The project is consistent with the Milpitas General Plan, specifically Policy 2.a-1-3:*

The General Plan designation of the Project site is Industrial Park (INP). The use of the Project site is in conformance with City's General Plan in that the existing industrial building and use is permitted use, the proposed fencing of eight (8) feet is permitted with a Site Development Permit under the Zoning Code.

Additionally, the Project will "encourage economic pursuits which will strengthen and promote development through stability and balance" in that it will allow the Project to provide security for the shipping and receiving area and meet the company's industrial business demand.

- c) *The project is consistent with the Milpitas Zoning Ordinance:*

The Project is consistent with this finding because the 8-foot tall fence is allowed in the Industrial Park zone with Site Development Permit. The site complies with development standards in terms of setback, height, and parking regulations as further described in staff's memorandum to the Planning Commission.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-008** and approving Site Development Permit SD13-0022 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014.

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Chair**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

**EXHIBIT 1****CONDITIONS OF APPROVAL  
ENTITLEMENT NAME NO. 14-008****General Conditions**

1. The Permittee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on February 26, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

2. Site Development Permit No. SD13-0022 shall become null and void if the Project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the Project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:
  - a. Completes a foundation associated with the Project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Pursuant to Section 64.06(1) of the Zoning Code, the Permittee shall have the right to request an extension of Site Development Permit No. SD13-0022 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
4. Prior to the issuance of any building permit, the Permittee shall pay in full the Project account balance and establish a remaining balance of 25% of the initial deposit.
5. Prior to the issuance of any building permit, the Permittee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the Project. **(P)**
6. Cost and Approval. The satisfaction of each condition set forth in this Exhibit shall be at the sole expense of Permittee or Permittee's successors or assigns and each such condition shall be subject to City's review and approval.

7. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
8. The construction and use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
9. Permittee shall fully comply with the 2013 California Building Code and 2014 Milpitas Municipal Code. **(B)**
10. Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for building permit. **(B)**
11. Provide complete structural design calculation and construction details for 8 feet high fence in compliance with 2013 California Building Code section 1613.1 and American Society of Civil Engineers (ASCE)-7 Chapter 15 when applying for a building permit. **(B)**
12. Proposed paving shall comply with the 2014 Milpitas Municipal Code section II-13-18. **(B)**
13. All flat non-structural concrete work shall be in compliance with 2014 Milpitas Municipal Code section II-13-17.05. **(B)**
14. The submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit during construction permit process. Comments are based on the current 2010 edition of the California Fire and Building Codes. **(F)**

15. The proposed enclosure shall not block or enclose a required exit. Exit discharge shall provide direct and unobstructed access to a public way. *CFC 1027* **(F)**

16. Enclosure shall not obstruct or impede access to fire suppression appliances (hydrants, fire department service lines, FDC.PIV or other fire service utilities). **(F)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney